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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,024	10/16/2001	John Kouvetakis	9138-0064CIP	6703

7590

08/12/2003

Kittie Murray  
Gallagher & Kennedy  
2575 E. Camelback Road  
Phoenix, AZ 85016

EXAMINER

ANDERSON, MATTHEW A

ART UNIT

PAPER NUMBER

1765

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

8

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

1. Applicant's election with traverse of claims 1-11, 14-20, 34 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the search would overlap and the applicant is a non-profit educational institution. This is not found persuasive because in the first instance, it is well established that a serious burden exists in the differing issues that arise during the prosecution of the distinct statutory classes of invention. In the second instance, the examiner is not aware of any law or rule regarding restriction/election practice that applies only to non-profit educational institutions. The requirement is still deemed proper and is therefore made FINAL.

2. This application is in condition for allowance except for the presence of claims to an invention non-elected with traverse in Paper No. 7. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

MAA

August 11, 2003

**Notice of Allowability****Application No.**

09/981,024

**Applicant(s)**

KOUVETAKIS ET AL.

**Examiner**

Matthew A. Anderson

**Art Unit**

1765

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to paper filed 5/29/2003.
2. ☐ The allowed claim(s) is/are 1-11, 14-20 and 34.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached MA 8/10/03 ☒ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of claims 1-11, 14-20, 34 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the search would overlap and the applicant is a non-profit educational institution.. This is not found persuasive because in the first instance, it is well established that a serious burden exists in the differing issues that arise during the prosecution of the distinct statutory classes of invention. In the second instance, the examiner is not aware of any law or rule regarding restriction/election practice that applies only to non-profit educational institutions.

The requirement is still deemed proper and is therefore made FINAL.

2. This application is in condition for allowance except for the presence of claims to an invention non-elected with traverse in Paper No. <sup>7</sup>\*\*\*. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

***Allowable Subject Matter***

3. Claims 1-11, 14-20 and 34 are allowed.
4. The following is an examiner's statement of reasons for allowance:

Although the MBE method of deposition of quaternary thin epitaxial films was known in the art, that art did not disclose or suggest the use of the claimed gaseous precursor ( $\text{H}_3\text{YCN}$ ) in such a MBE processes. The examiner acknowledges the known prior existence of the gas composition. However, there was no prior art suggestion to use the specified gas as the precursor (see Kern et al. in Journal of Materials Research 1993 and 1998 from IDS).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew A. Anderson whose telephone number is (703) 308-0086. The examiner can normally be reached on M-Th, 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Norton can be reached on (703) 305-2667. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MAA  
August 7, 2003

NADINE G. NORTON  
PRIMARY EXAMINER  
